

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Forbearance from Applying)

Provisions of the Communications Act)

to Wireless Telecommunications Carriers)

WT Docket No. 98-100

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Comments of Motorola, Inc.FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Motorola, Inc. ("Motorola") hereby submits its comments in response to the *Notice of Proposed Rulemaking* ("Notice") in the above-captioned proceeding.¹ Motorola has, and continues to, support broad forbearance for all competitive commercial mobile radio service ("CMRS") offerings. At a minimum, however, the Commission should forbear from all but minimal regulation of non-covered specialized mobile radio ("SMR") operations, as that term was defined in the context of the Commission's *Enhanced 911* ("E911") docket.² In particular, as discussed below, the Commission should refrain under Section 10 of the Communications Act from requiring non-covered SMRs to comply with number portability requirements, Telephone Operator Consumer Services Improvement Act ("TOCSIA") regulations, and the full panoply of periodic filing and funding rules inappropriate for smaller scale, localized services.

¹ *Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Docket No. 98-100, FCC 98-134 (rel. July 2, 1998) (*Notice of Proposed Rulemaking*) ("Notice").

² *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, 12 FCC Rcd 22665, 22702-05 (1997) (*Memorandum Opinion and Order*); see 47 C.F.R. § 20.18(a).

Section 10 of the Communications Act sets forth the circumstances under which the Commission is required to exercise its authority to forbear from regulation of competitive communications services.³ Specifically, the Commission must forbear from regulations: (i) if application of the rules is unnecessary to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory; (ii) if enforcement is not necessary to protect consumers; and (iii) if elimination of the rules will serve the public interest. As discussed below, while Motorola believes forbearance is justified under the Act for a broad range of competitive CMRS offerings, at a minimum, the Commission should forbear from applying all but minimal regulatory oversight to non-covered SMRs.

First, as Motorola has previously noted, the definition of “covered SMR providers” adopted in the *Telephone Number Portability First Report and Order*⁴ is overly broad and encompasses many traditional SMR operators that lack the technical capability to perform number portability and whose users do not require this functionality.⁵ As such, requiring these SMR operators to provide number portability will not further the policy goals that the Commission hopes to achieve through the imposition of number portability obligations – namely, the promotion of competition between providers of local telephone services. Traditional

³ See 47 U.S.C. § 160.

⁴ *Telephone Number Portability*, 11 FCC Rcd 8352, 8433 (1996) (First Report and Order and Further Notice of Proposed Rule Making) (subsequent history omitted).

⁵ See Letter from Mary E. Brooner, Motorola, Inc., to David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, CC Docket No. 95-116 (dated May 19, 1997).

SMR operators do not compete in the market for the provision of local telephone services, nor do their users seek or need to “port” numbers associated with their SMR system.

Second, Motorola believes the Commission should explicitly forbear from applying its TOCSIA rules to local SMRs to the extent any such SMRs might be misconstrued as operator service providers or aggregators. As noted by the Commission, the primary intent of the TOCSIA requirements is to protect transient consumers. By their nature, however, smaller traditional SMR systems exempted as non-covered SMRs in the E911 context do not seek to serve transient users. Generally, these dispatch systems support business, service-oriented, and industrial customers where roaming and incidental use is not at issue. Under the circumstances, TOCSIA regulations merely add to the complexity of initiating and maintaining service to users and serve no consumer benefits.

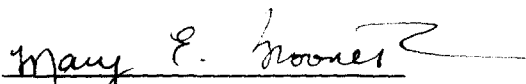
As a final matter, Motorola also urges the Commission to exercise its authority under Section 10 to forbear from imposing the panoply of filing and funding requirements applicable to CMRS providers on smaller SMR systems. At present, CMRS providers are required to comply with a litany of regulations, including ownership regulations and Equal Employment Opportunity reporting that are designed for larger public systems and serve little function for small, traditional “mom and pop” operations. Similarly, the Commission imposes funding requirements, including regulatory, Telecommunications Relay Service, Universal Service Funding, and Numbering Administration fees that disproportionately impact smaller carriers. In some instances, for example, the minimum fees have a financial impact that does not reflect an appropriate *pro rata* share of the economic burdens. Even if the burdens were rationalized, however, the impact of any fees—and the financial and time burdens of tracking and paying such fees—on the smaller margins of traditional SMR systems, as compared to larger carriers, remains disproportionate.

Given the more discrete range of services provided by non-covered SMRs, the economic benefits, if any, of these programs is also largely hypothetical. At the same time, smaller SMRs do exert some competitive pressures on other types of CMRS offerings and provide a necessary communications resource for smaller companies with limited wireless needs. To encourage such systems, Motorola urges the Commission to forbear, under Section 10 of the Act, from continuing to maintain the periodic filing and funding requirements applicable to other CMRS providers.

In sum, Motorola urges the Commission to use its Section 10 authority to forbear from applying regulations designed for larger carriers to non-covered SMR providers, as that term is defined in the E911 proceeding. This definition not only more appropriately recognizes the limitations of traditional SMR providers and is more consistent with the Commission's regulatory policy goals.

Respectfully submitted,

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Dated: August 3, 1998